shown below and I further agree that I shall be held responsible for the first $1000 subject to the provisions of cl 7 as printed overleaf.

It would be observed that the original bargain envisaged under the blank form was that a hirer would be responsible for a sum fixed in respect of any loss or damage, howsoever caused and whether arising out of any breach of the contract. The agreement as signed made the bargain subject to the terms of cl 7 which accordingly has to be reproduced below:

> 7 That the hirer (defendant) shall pay to the owner's (plantiffs') cost of repair collision or upset damages to the vehicle provided, however, if the vehicle is operated in accordance with all the terms and conditions of rental hereof, the hirer's (defendant's) liability for such damage shall not exceed $1000.
>
> Save as aforesaid the hirer (defendant) shall indemnify the owner (plaintiffs) against all loss suffered by the owner (plaintiffs) including loss resulting from inability to use the vehicle or let the same on hire in consequence of the destruction loss or theft of or damage to the vehicle prior to the vehicle being returned to the owner (plaintiffs). (The words within the brackets are added by me).

Clause 7 limited the liability of the defendant to the sum of $1,000 'if the vehicle is operated in accordance with all the terms and conditions of rental hereof.' One of the terms, as contained in cl 4 of the agreement, provided that the hirer or the authorized driver 'shall at all times drive the vehicle in a careful and skilful manner.' It could be seen that far from being an insurer for any loss to the car, the defendant wanted to limit his loss to $1,000 so long as he or the authorized driver had been careful and skilful in driving the car. Counsel for the plaintiffs relied on two authorities, namely *Vendair (London) Ltd* v *Giro Aviation Company Ltd*[1] and the almost contemporaneous Canadian case of *AR Williams Machinery Co Ltd* v *Muttart Builders Supply (Winnipeg) Ltd.*[2] I hope I am forgiven for not setting out the cases in any further detail. I am not doing so because the judgments in these cases, which were delivered after trials were concluded in each case, are examples of the construction of the individual contract of hire of an Auster aircraft in the first case and of the enlargement by contract, in the second case, of a hirer's obligations greater than that which the law would otherwise impose upon him. They do not directly bear on the interpretation of the terms of the agreement under consideration in this case except that they did serve as examples of particular constructions of two private documents. I was not persuaded by the construction of cl 12 canvassed by counsel for the plaintiffs. If I was wrong, however, I thought that the whole issue should be looked at and determined only at the end of a trial in which the factual matrix or background of the hire and the conclusion of the hire agreement including the age and condition of the car, inter alia, could be examined and findings of fact would be made.

For these reasons, my initial decision to dismiss the plaintiffs' appeal with costs remained unaltered, as I indicated to the parties at the conclusion of the further arguments.

Appeal dismissed.

Solicitors: *WT Woon & Co*; *Wee Ramayah & Partners.*

Reported by *Terence Tan Bian Chye*

Shirley Koo v Kenneth Mok Kong Chua

HIGH COURT (SINGAPORE) – DIVORCE PETITION NO 24 OF 1985
THEAN J
7 MARCH 1989

Family Law – Divorce – Maintenance for wife – Division of matrimonial property – Women's Charter (Cap 353, 1985 Ed), s 106

The petitioner and the respondent were married and had three children. The petitioner later presented the present petition for divorce on the grounds that the marriage had broken down irretrievably. The divorce proceedings proceeded as if they were uncontested. However, at the first hearing, the issues as regards the custody of the three children, the maintenance of the petitioner and the children, and the division of matrimonial property was not disposed of due to lack of time and the respondent not having provided sufficient particulars in his affidavit to settle the last two issues. The hearing was therefore adjourned and an interim order prohibiting the respondent from letting out the matrimonial home was made. At the second hearing, an order was made giving custody of the three children to the petitioner, ordering the respondent to pay maintenance to the petitioner, ordering the respondent to transfer his share of the matrimonial property to the petitioner and to deliver vacant possession of it, and restraining the respondent from disposing of the matrimonial property. Later, the petitioner requested for the amount of maintenance to be increased while the respondent resisted this application.

Held, allowing the petitioner's application:

(1) The respondent only stated his salary in his affidavit but not his other allowances or perquisites. The court did not believe that his monthly salary was all he was earning from his employer, especially since his previous employer paid him more than his present declared salary.

(2) The respondent stated that an increase in the maintenance could undermine his motivation to work. This ground for not increasing the maintenance was rejected.

(3) A house, an apartment, membership of a country club and the cash balances in the respondent's bank accounts were the property owned either jointly or by the respondent alone. The country club membership was matrimonial property since it was acquired during marriage. The house was bought from the proceeds of sale of a previous house to which the petitioner had also contributed in money, property and work. The petitioner was therefore entitled to a share of the present house.

The membership in the country club was acquired during marriage and was thus a matrimonial property.

(4) The petitioner had made contributions to the welfare of the family by looking after the home and caring for the children.

(5) Taking into account the factors prescribed in s 106(2) and (4) of the Women's Charter, a fair division of the matrimonial property would be for the respondent to transfer all his interest in the house to the petitioner and for her to forego all her claims to the other assets. This would give her and the children a permanent roof over their heads.

(6) As a protective measure, an interim order would be made restraining the respondent from disposing of the apartment until his interest in the house is transferred to the petitioner free from all encumbrances.

[*Editorial Note:* The respondent has appealed to the Court of Appeal vide Civil Appeal No 124 of 1988.]

Legislation referred to
Women's Charter (Cap 353, 1985 Ed) s 106(1), (2), (3), (4), (5)

Jeane Wu for the petitioner.
Aloysius Leng for the respondent.

Cur Adv Vult

Thean J: The petitioner and the respondent were married on 22 March 1975, and they have three children, namely: (i) Ruth Mok Cheah Ling, born on 18 May 1976; (ii) Priscilla Mok Ai Ling, born on 14 October 1980, and (iii) Daniel Mok Chuan Qun, born on 24 September 1981.

On 14 June 1984, because of the unreasonable behaviour of the respondent, the petitioner left the matrimonial home taking along with her the three children. On 7 January 1985 the petitioner presented this petition for divorce on the ground that the marriage had broken down irretrievably, and she relied on the fact that the respondent had behaved in such a way that she could not reasonably be expected to live with him. The petition was initially contested and an answer was filed. At that time, the three children were, and had been since 4 June 1984, in the de facto custody of the petitioner. The respondent on 4 July 1986 obtained an interim order giving him access to the three children at certain specific times and place. Subsequently, on 8 August 1988, on application by the respondent, leave was given for the answer to be withdrawn, and the petition thenceforth proceeded as uncontested. It came before me for hearing on 11 August 1988. The respondent was represented by his counsel at the hearing and did not dispute or challenge the evidence adduced by the petitioner of his unreasonable behaviour. I accordingly granted to the petitioner the decree nisi to be made absolute on the expiry of three months and ordered that (i) the custody of the three children, (ii) the maintenance of the petitioner and the three children and (iii) the division of matrimonial property be adjourned for further hearing in chambers. I also ordered the respondent to pay the costs of the proceedings.

In due course, the three matters came on for hearing before me. At the first hearing I could not dispose of the matters for two reasons. First, there was not enough time to hear arguments from both counsel, and secondly, the respondent had not given sufficient particulars of his means and assets in the affidavit filed by him with the result that it was not possible to resolve the questions of maintenance and division of matrimonial property. Much of his lengthy affidavit had been devoted to seeking to rebut his unreasonable behaviour which led to the breakdown of the marriage. That was an exercise in futility, as the fact of his unreasonable behaviour had been established at the hearing of the petition, and it was not open to him to resurrect such an issue. I therefore adjourned the hearing to another date and at the same time directed the respondent to file an affidavit setting out in full his assets and income and also made an interim order prohibiting the respondent from letting out the property, No 26, Alnwick Road, Singapore to anyone or permitting anyone (other than the petitioner and the children) to occupy it until further order. Subsequently, two affidavits were filed: one by the respondent sworn to on 17 November 1988 and one by the petitioner in reply sworn to on 25 November 1988. The matters then came on for hearing again on 28 November 1988 and at the conclusion I made an order as follows:

(i) that custody of the three children be given to the petitioner with access to the respondent as provided in the interim order of 4 July 1986;
(ii) that the respondent do pay to the petitioner for the maintenance of the petitioner and the three children a sum of $2,500 pm with effect from 1 December 1988;
(iii) that by way of division of the matrimonial property the respondent do transfer his share and interest in the matrimonial property, No 26, Alnwick Road, Singapore to the petitioner free from encumbrances and that such transfer to be effected and completed not later than three months from the date thereof;
(iv) that the respondent do deliver vacant possession of the property, No 26, Alnwick Road, Singapore to the petitioner not later than four weeks from the date thereof;
(v) that until the property, No 26, Alnwick Road, Singapore is transferred to the petitioner, the respondent be restrained from charging, selling or otherwise disposing of the property known as Blk 42, #01-04, Goodluck Garden, Singapore;
(vi) that the costs of the hearing of the matters be borne by the respondent, and
(vii) that the parties be at liberty to apply.

After the conclusion of the hearing an affidavit affirmed by the respondent's solicitor, Mr Aloysius Leng, on 2 December 1988 was filed on behalf of the respondent purporting to give further particulars of the respondent's assets. I do not know precisely the purpose of this affidavit, but presumably it was filed in connection with an application to me to hear further arguments which I refused. I was not persuaded by the content of that affidavit to alter in any way the decision which I had made earlier.

On the question of custody of the three children, there was no dispute: the respondent had agreed that custody should be given to the petitioner and he only wanted access as provided in the interim order made on 4 July 1986. Paragraph 1 of the order was therefore made in terms as agreed.

On the question of maintenance, there was a maintenance order made by the magistrate's court on 11 December 1987, No MO 367 of 1987, under which the respondent was ordered to pay with effect from 1 January 1988 a sum of $2,100 pm for the maintenance of the petitioner and the children which sum was apportioned as follows: (i) $1,000 to the petitioner; (ii) $550 to the first child; (iii) $350 to the second child, and (iv) $200 to the third child.

Before me, the petitioner requested for the amount of maintenance to be increased to $2,728 pm, and gave a breakdown of the expenses justifying the sum of $2,728 pm. This increase was resisted by the respondent.

The petitioner is a housewife, and at the date of hearing she and the three children were staying at Blk 5000-J, #17-41, Lagoon View, Marine Parade Road, Singapore 1544 which was rented at a monthly rent of $500 pm. The petitioner has been and is looking after the children, attending to the household duties such as cooking and washing for them. The respondent is at present working in Japan. However, he did not specifically say the name of his employer but it appears from a certificate which he exhibited and marked 'A' in his affidavit sworn to on 17 November 1988 that he is working in an organization called Asian Productivity Organization. Nor did he say the nature of his work or the operations of that organization. He said that his net monthly salary was approximately the equivalent of S$6,164, out of which he said he had to repay a small sum to his employer in respect of an advance initially made to him. He did not mention anything about living and other allowances or other perquisite, monetary or otherwise, which he received or enjoyed. Notwithstanding my direction, he failed to make a full disclosure of his monthly income, as distinguished from merely his salary from his employment.

I do not believe that the equivalent of S$6,164 is all that he is earning from his present employer. I think he earns more than that. Prior to his present employment, he was working in Malayan Banking Berhad (the petitioner said he was working in The Malayan Finance Corporation Berhad which is a subsidiary of Malayan Banking Berhad) and was also a part-time lecturer at the National Productivity Board. According to the petitioner, his net salary for the year of assessment 1987 was $77,220.60 (about $6,435 pm); that was not denied by him. I would expect his income (as distinguished from net salary from his then employer) in 1987 and 1988 respectively to be more than that. He left Malayan Banking Berhad to join this Japanese organization in Japan, and one would expect that the total emolument from his new employer would exceed the total of what he received from Malayan Banking Berhad and National Productivity Board. There must have been some financial attractions or inducements to him to join this organization and work abroad. His financial position in terms of income must have improved. It is unfortunate that he did not produce or disclose his terms and conditions of service with his present employer. It is inconceivable that the respondent would take up this apppointment without any written contract – either in the form of an exchange of letters or in the form of a formal contract.

The stand taken by the respondent in resisting the application for an increase in the amount of maintenance was, to put it mildly, rather odd, bearing in mind his obligations to the petitioner and the children. He said that the court made a maintenance order effective from 1 January 1988 requiring him to pay $2,100 pm and that hardly a year had passed by and the petitioner was asking for more; that, according to the respondent, could 'undermine' his motivation to work. I was not in the least impressed by that sort of attitude. If his earnings have increased in a material respect – as I think they have – then obviously the amount of maintenance to the petitioner and the children should be increased; there was a material change in the circumstances. It is unfortunate that the respondent should consider such increase as undermining his 'motivation to work'. The respondent appeared to me to have a perverted sense of values.

It was not before me what disclosure the respondent made as to his total income in 1987 on the basis of which the maintenance order was made in December 1987. But on what could be inferred as his total income which then comprised his emoluments from Malayan Banking Berhad and National Productivity Board and which probably exceeded $6,500 pm, a sum of $2,100 pm as maintenance for the petitioner and the children, out of which the petitioner had to pay a rent of $500 for their accommodation, appeared to me to be rather low. On the basis of the total of those earnings of the respondent, I would have made an order for payment of a sum exceeding $2,100 pm.

There are two other factors which I took into consideration in making the order on the maintenance. First, the loan of $10,000, which he borrowed from Overseas Union Bank Ltd to pay for the entrance fee for joining Serangoon Gardens Country Club, would be repaid to the bank in full by December 1988. Secondly, obviously due to his improved financial position, he was paying a monthly tithe of $700 pm which prior to his present employment he did not do so.

For all these reasons I decided that the monthly maintenance to the petitioner and the three children should be increased, and having regard to the order which I made in the provision of a home to them I decided that a monthly sum of $2,500 would be fair and reasonable and is fully within the means of the respondent; without this provision of a home the amount would be much more.

I now turn to the question of division of matrimonial property, which is governed by s 106 of the Women's Charter (Cap 353, 1985 Ed). For convenient reference I set out below the text of this provision in full:

> 106(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1) the court shall have regard to –
>
> (a) the extent of the contributions made by each party in money, property, or work towards the acquiring of the assets;
>
> (b) any debts owing by either party which were contracted for their joint benefit; and
>
> (c) the needs of the minor children (if any) of the marriage.
>
> and, subject to those considerations, the court shall incline towards equality of division.
>
> (3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (4) In exercising the power conferred by subsection (3) the court shall have regard to –
>
> (a) the extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family; and
>
> (b) the needs of the minor children, if any, of the marriage,
>
> and, subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.
>
> (5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

From the affidavits filed, it appeared to me that the matrimonial assets consisted of the following:

(a) the semi-detached house known as No 26, Alnwick Road ('the Alnwick Road property');
(b) apartment known as Blk 42, #01-04, Goodluck Garden, Singapore ('the Goodluck Garden apartment');
(c) the benefits of membership of Serangoon Garden Country Club; and
(d) the cash balances in the respondent's accounts with banks.

Counsel for the respondent suggested that only the Alnwick Road property was a matrimonial asset and that the others were not. I was unable to agree. In my opinion, all these assets were acquired during the marriage, and came within s 106 for division between the petitioner and the respondent in accordance with the provisions thereof. It was then contended on behalf of the respondent that all of them were acquired by his sole effort. That again I was unable to agree. What was contended was correct only with respect to the assets described in (b), (c) and (d), but, in my judgment, not correct with respect to the Alnwick Road property. That property was acquired in this way. Just before the marriage, the respondent bought a terrace house No 25, Jalan Minggu ('the Jalan Minggu property') for $85,000 and it was bought in the joint names of the respondent and the petitioner and was intended to be their matrimonial home. The purchase price was paid by the respondent from (i) his own funds and (ii) a mortgage loan from Credit POSB Pte Ltd. The loan was repayable by monthly instalments and these monthly repayments were paid by the respondent from moneys withdrawn from his account with the Central Provident Fund Board ('CPF'). However, the petitioner did contribute towards the acquisition of that property in the following ways. First, the installation of the kitchen cabinets therein – which were fixtures to the property – and the purchase of crockery and pots and pans were paid for by the petitioner. Secondly, at the time of their marriage the respondent was a deputy director of the National Productivity Board and was earning $1,800 pm and the petitioner was working as a sales supervisor and was earning $500 pm. The petitioner was then paying for the servant's salary, food and grocery bills while the respondent was paying for the utility bills, car loan, and the instalments of mortgage loan on their matrimonial home. This arrangement or division of payment of living expenses continued until April 1976, a month before the first child was born. In a small way the petitioner had contributed in money, property or work towards acquiring that property. Hence, it

is not correct to say, as the respondent said, that the Jalan Minggu property was acquired by his sole effort; it was acquired by the joint efforts of the petitioner and the respondent, though the major contribution came from the respondent. Subsequently – the precise date was not furnished by the respondent – the mortgage loan owing to Credit POSB Pte Ltd was fully repaid by the respondent out of a gift of $50,000 from his mother.

In 1981, the Jalan Minggu property was sold for $225,000, and the petitioner and the respondent bought in their joint names the Alnwick Road property for $360,000. A part of the sale proceeds of $225,000 was used to repay the amount the respondent had withdrawn from his CPF account plus interest and the balance thereof in paying the purchase price and renovation of the Alnwick Road property. The respondent did not disclose the amount refunded to his CPF account, but it did not appear to me to be very considerable. The bulk of the sale proceeds was applied towards payment of the purchase price and renovation of the Alnwick Road property. The shortfall of the purchase price of the Alnwick Road property was financed, according to Mr Aloysius Leng, by a NTUC Income loan of about $190,000 obtained by the respondent and a cash gift from his father.

On the account as I have set out, it is clear that a part of the proceeds of $225,000 represented the petitioner's contribution to the Jalan Minggu property and as a portion of that amount was applied in payment of the purchase price and renovation of Alnwick Road property, it must follow that a part of that portion represented the petitioner's contribution – monetary contribution – to the acquisition of the Alnwick Road property. I therefore rejected the claim of the respondent that that property was 'entirely paid for' by him; it was acquired by the joint efforts of the petitioner and the respondent. Here again the major contribution was made by the respondent.

The respondent said that the Alnwick Road property was estimated to be worth $450,000 and it was subject to a charge created by him in favour of CPF to secure the amounts withdrawn from his CPF account. At the date of hearing the respondent said that the total amount of his CPF withdrawals and interest secured on the Alnwick Road property was about $250,000. The respondent utilized the funds in his CPF account to pay the monthly instalments of the NTUC loan, and according to him, the outstanding NTUC loan in 1983 was $50,000 and he withdrew an equivalent amount from his CPF account to pay off this loan. He did not, however, give any particulars as to the amounts and dates of withdrawal and the interest accrued. According to the petitioner, however, a part of the amount of $250,000 represented drawings made for or on account of the Goodluck Garden apartment; this did not appear to have been refuted by the respondent.

The second matrimonial property, Goodluck Garden apartment, was purchased by the respondent in 1983 for $314,000. This was financed partly by a staff housing loan of $240,000 from his employer, Malayan Banking Berhad, and partly from money given to him by his late father. According to the respondent, this property is subject to a mortgage in favour of Credit POSB Pte Ltd, and as at the date of hearing a sum of about $113,000 was still owing.

The respondent's membership in Serangoon Gardens Country Club is certainly an asset and it was acquired during the marriage, and is, in my view, a matrimonial property. According to him, the entrance fee was $10,000 and was financed by a loan from Overseas Union Bank Ltd which he had repaid. But according to the petitioner, the entrance fee was $15,000. The respondent said that the membership was worth about $16,000, but no evidence was adduced in support.

At the date of hearing the respondent did not disclose his bank balances. Later, in an affidavit affirmed on 2 December 1988 by his solicitors, the respondent showed that he had bank balances totalling a sum of $92,478.02. These bank balances also formed part of the matrimonial assets.

I now turn to the contributions made by the petitioner to the welfare of the family in terms of looking after the home and caring for the children. Since April 1976 the petitioner has been a housewife, attending to the household work and looking after the children. She and the children left the respondent on 14 June 1984, and since then she has been looking after the children all on her own. At all material times the respondent gave her an allowance, and at the time she left him the amount was $1,700 per month; it was increased to $2,100 as from 1 January 1988.

The respondent has throughout had a good income. The respondent is an economics graduate from the then University of Singapore. At the time of the marriage he was a deputy director of the National Productivity Board earning $1,800 pm. In 1977 he left that organization and was employed by NTUC as deputy director of productivity service earning about $4,000 pm. In 1982 he left NTUC and was employed as a personnel manager of Malayan Banking Berhad earning probably much more than $4,000 pm together with perquisites such as entertainment and other allowances and the use of a car. He was also holding the position of a part-time lecturer at the National Productivity Board. No information was given by the respondent as to how much he earned from the bank and the Board. But, as I have said, as a matter of inference the total income from these two employers must have exceeded $6,500 pm. In the later part of 1988 he relinquished these two positions and took up an appointment with the Asian Productivity Organization in Japan, which he is still holding. What he paid to his

family in the form of an allowance was not really very substantial or generous having regard to what he earned. One could therefore infer – and this, in my view, is a fair and reasonable inference – that over the years he must have accumulated considerable amounts of funds, some of which must have been invested. He, however, had made no disclosure of his investments and the income therefrom.

The four items of assets acquired may now be regrouped as follows. First, the Alnwick Road property is an asset which was acquired by the petitioner and the respondent by their joint efforts, and the division of this amount would have to be governed by s 106(2) of the Women's Charter. The other three assets, Goodluck Garden apartment, membership in Serangoon Gardens Country Club and the cash balances in the respondent's accounts with banks were acquired by the respondent solely and the division of these assets would have to be governed by s 106(4) of the Women's Charter. In making a division of all these assets between the petitioner and the respondent it is plainly an impossible task to quantify with any precision in monetary terms the amount of each party's contribution and I approached the problem in a broad manner, taking into account the factors prescribed in sub-ss (2) and (4) of s 106 of the Women's Charter. I divided the assets in the following manner, which I considered as fair and reasonable.

First, the petitioner and the children were required to vacate the flat where they were then staying by 31 December 1988 and were in need of accommodation urgently. The Alnwick Road property was their home before they left the respondent in June 1984. Since then the respondent had been staying there alone until he took up his present appointment in Japan. It had become vacant, and I therefore directed that the respondent should vacate and deliver possession of that house to the petitioner for occupation by her and the children.

Next, I dealt with the actual division of the assets. Taking into account all the relevant circumstances a fair division would be for the respondent to transfer to the petitioner all his interest in the Alnwick Road property and the petitioner to forego all her claims on the other assets. This would give to the petitioner and the children a permanent roof over their heads and afford them some security. In this connection, the respondent must make arrangement to discharge the charge on the Alnwick Road property which was created by him and for his own purpose. That charge is in favour of the Central Provident Fund Board and is to secure his withdrawal of funds from his CPF account, and as and when those funds are repaid to Central Provident Fund Board they belong to him. They do not really constitute a debt or liability as such. The respondent appeared to me to have sufficient resources to repay the moneys he withdrew from his CPF account and would be in a position to discharge the charge. Even if he did not have sufficient funds to repay the entire amount he could make use of the Goodluck Garden Apartment to raise a loan for the balance of the amount required. He is a person of some wealth.

Lastly, as a protective measure I made an interim order restraining him from charging, selling or otherwise disposing of the Goodluck Garden apartment until his interest in the Alnwick Road property is transferred to the petitioner free from all encumbrances. That obviously is a protective order; otherwise he might further encumber that apartment or dispose of it with the result that it would be impossible to implement the division of asssets as ordered. Of course, if he wishes to use the Goodluck Garden apartment to raise a loan to repay his CPF account secured on the Alnwick Road property, leave would be given with the necessary safeguard and the transactions could be so synchronised that the result contemplated by the order would be achieved. There should be no difficulty in that respect.

Order accordingly.

Solicitors: *R Ramason*; *Abraham Low & Partners.*

Reported by *Terence Tan Bian Chye*

Berta Services Sdn Bhd v Makhanlall & Co Ltd

HIGH COURT (SINGAPORE) – SUIT NO 1081 OF 1978
CHAN SEK KEONG J
2 MARCH 1989

Legal Profession – Solicitor and client costs – First bill submitted to client – Request for taxation – Submission of second bill – Effect of first bill on second bill – Legal Profession Act (Cap 161, 1985 Ed), ss 117(3) & 125

Civil Procedure – Solicitor and client costs – Whether submission of one bill to client precludes solicitor from submitting a replacement bill

The solicitors of the plaintiffs in the action had sent a bill to their clients after the action had been decided. The clients had asked for taxation of the bill. The solicitors then sent a second bill to their clients and withdrew their first bill. The senior assistant registrar refused to tax this second bill and awarded costs to the clients. From this decision, the solicitors appealed.

Held, allowing the appeal:

(1) Once the bill is delivered, the solicitor is bound by it, where the first bill is larger than the second, the rationale for this rule being to prevent the solicitor from escaping the consequences of the one-sixth taxation rule.

(2) Where the second bill is larger than the first, the rationale for this rule is that without it, a client may feel that he cannot safely pursue his request for taxation because the result may be that he has to pay more than what he was charged in the first instance.